Court No. 2

Writ Petition No. 683(M/B) of 2002.

Arun Kumar & eight others ..... Petitioners

Versus

Managing Director, Uttaranchal Van Vikas Nigam and two others ..... Respondents.

.....

Hon'ble P.C. Verma, A.C.J.
Hon'ble Irshad Hussain, J.

This petition has been filed by the nine petitioners who had submitted their tenders in pursuance of the tender notice dated 23.8.2002 for contract to transport the timber from various forest centers to depots of the Forest Development Corporation.

The petitioners submitted tenders within time. The tenders were opened and it was found that the petitioners' tenders were to be accepted. Before acceptance a letter dated 01.10.2002 was sent to all the petitioners by the respondent No. 2 as to whether they were willing to accept the conditions mentioned in the aforesaid letter, namely, whether they were ready to transport the timber on the rates as determined by Regional Manager. Secondly, whether the petitioners were prepared to appear before the office of the Corporation, if it is acceptable then the petitioners were required to appear before the office of Divisional Forest Officer within three days from the date of receipt of the letter for execution of the agreement for which requisite stamp papers were also to be brought by the petitioners.

The learned counsel for the petitioners submits that the petitioners received the letter dated 01.10.2002 on various dates and they purchased the stamp within three days and approached the office for execution of the agreement. It has not been specifically stated as to what was the date of the receipt. A supplementary affidavit has been filed in

which the date of receipt has been mentioned but his mention of fact has not been supported by the documentary evidence which could be the acknowledgment maintained by the Postman for delivery of the registered letter. This acknowledgement is sent back to the sender but the datewise receipt slips are maintained in the postal delivery chart by the Postal Department. The petitioners could have easily obtained it from the Postal Department but the same has not been filed in support of the statement made regarding delivery of the letter in supplementary affidavit. The statement made that the petitioners approached the office within three days have not been substantiated by the documentary evidence. No document is on record to show that the petitioners made any effort when there is oral refusal by someone in the office. They approached the higher officer.

The learned counsel for the petitioners invited the attention of this Court on representation alleged to be made immediately when the agreements were refused to be executed on the stamp papers duly purchased by them for the purpose. This representation is undated. Therefore, in view of the aforesaid facts and circumstances, it is not possible to decide as to whether the petitioners approached with the acceptance of the offer made in the letter dated 01.10.2002 within three days from the date of receipt of the letter. In view of the allegations and counter allegations made in the pleadings of the parties the question is highly disputed question of fact which cannot be gone into under Article 226 of the Constitution of India without which it cannot be decided that the contract in favour of the petitioners was concluded before the fresh tender notices were issued.

Therefore, for the reasons recorded above we do not find any merit in the writ petition. The writ petition is dismissed accordingly. No order as to costs.

After the aforesaid order was passed, the learned counsel for the petitioners made a request that the security deposited by the petitioners with the Forest Department Corporation may be refunded to them to which the learned counsel for the Corporation made statement that it shall be refunded. In view of the aforesaid statement made by the learned counsel for the respondent-Corporation, no order is required to be passed.

(P.C. Verma, A.C.J.) **(Irshad Hussain, J.)**

01.04.2003
P.Singh